

**Matter of:** Bollinger Machine Shop & Shipyard, Inc.

**File:** B-261135.2

**Date:** September 1, 1995

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Marcus B. Slater, Jr., Esq., and Jennifer J. Zeien, Esq., Fort & Schlefer, for the protester.  
Kenneth S. Kramer, Esq., Fried, Frank, Harris, Shriver & Jacobson, and Paul C. Hill, Esq., for Textron Marine & Land Systems, Inc., and J. Stephen Lawrence, Jr., Esq., Arnold & Porter, for Peterson Builders, Inc., interested parties.  
Nilza F. Velazquez, Esq., United States Coast Guard, for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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#### **DIGEST**

1. The low bid under an invitation for bids for lifeboats and associated services and equipment calling for a base quantity and 4 option periods for additional quantities is not materially unbalanced where there is no credible evidence that the bid contains overstated prices for the lifeboats such that it could be considered mathematically unbalanced, and, in any case, the bid becomes low during the first option period.
2. An agency's acceptance and consideration of a bid modification, received by a representative of the bidder from a facsimile machine located in the agency's mail room and then hand-delivered by the bidder's representative to the cognizant agency contract specialist, was not precluded by the solicitation's prohibition against facsimile submissions.

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#### **DECISION**

Bollinger Machine Shop & Shipyard, Inc. protests the award of a contract to Textron Marine and Land Systems, Inc., under invitation for bids (IFB) No. DTCG23-95-B-AMB001, issued by the United States Coast Guard, Department of Transportation, for motor lifeboats and associated equipment and services.

We deny the protest.

The IFB, issued on January 27, 1995, provided for the award of a firm, fixed-price contract for a base quantity of 20 motor lifeboats and associated equipment and services, with four 365-day option periods to be exercised consecutively with each allowing for the purchase of up to 30 lifeboats for a total of up to 120 additional lifeboats.<sup>1</sup> Bidders were informed that the government would evaluate bids by adding the total price for all options to the total price for the base requirement. The IFB contained the standard sealed bidding award clause, set forth at Federal Acquisition Regulation (FAR) § 52.214-10, that, in pertinent part, cautions that a bid which is materially unbalanced may be rejected as nonresponsive.

The Coast Guard received five bids by the bid opening date of April 20, ranging from Textron's low bid of \$164,275,192, to the high bid of \$230,653,493. The three lowest priced bids are as follows:

	Textron	Peterson	Bollinger
Base Period	\$26,613,222	\$26,870,422	\$26,304,170
Option One	\$33,484,200	\$36,389,412	\$37,247,149
Option Two	\$31,888,630	\$38,398,600	\$38,135,910
Option Three	\$30,676,470	\$39,328,482	\$39,031,442
<u>Option Four</u>	<u>\$41,612,670</u>	<u>\$53,757,384</u>	<u>\$58,744,381</u>
Total	\$164,275,192	\$194,744,300	\$199,463,052

Bollinger protests that the agency should have rejected Textron's low bid and Peterson's second low bid as nonresponsive.<sup>2</sup> The protester first contends that Textron's bid should be rejected as unbalanced because Textron's unit prices for the lifeboats decline significantly from the base period through each of the option periods, whereas Bollinger's and Peterson's unit prices for lifeboats are relatively constant from the base period through each of the option periods.

To be rejected as unbalanced, a bid must be both mathematically and materially unbalanced. DGS Contract Servs., Inc.; Inventory Accounting Servs., Inc., B-258429; B-258429.2, Jan. 19, 1995, 95-1 CPD ¶ 27. A bid is mathematically unbalanced if it contains understated prices for some items and overstated prices for other items.

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<sup>1</sup>There were variances in the nature of the contract line items (CLINs) for the base quantity and the four options.

<sup>2</sup>Because we find Textron's bid was responsive, we need not consider Bollinger's protest that Peterson's bid was nonresponsive.

Hampton Roads Leasing, Inc., B-250645.2, Feb. 1, 1993, 93-1 CPD ¶ 486. On the other hand, the submission of a below-cost bid is not illegal, and the mere fact that a bid includes understated prices does not justify rejection of the bid. Id.; Wizard-Movers Elite, Inc.; Elkay Transp., Inc., B-255753; B-255753.2, Mar. 29, 1994, 94-1 CPD ¶ 221. Accordingly, even a well-founded allegation of understated prices without evidence of overstated prices does not constitute a legally adequate basis for finding that a bid is mathematically unbalanced. Id.

Textron's bid cannot be considered to be mathematically unbalanced because there is no credible evidence to suggest that any of its prices for the lifeboats are overstated. In his regard, Textron's price per lifeboat exceeds Bollinger's only during the base period of the contract, and differs during this period by only 1 percent.<sup>3</sup> Further, Textron's total price for the CLINs comprising the base period of the contract is only 1 percent higher than Bollinger's low price for the base period CLINs, and from 1 to 12 percent lower than the bids for the base period CLINs submitted by the other firms responding to the solicitation. Such a differential simply does not evidence that Textron's bid contains overstated prices. Hampton Roads Leasing, Inc., supra.

Even assuming for the sake of argument that Textron's bid was mathematically unbalanced, the acceptance of its bid would not be objectionable unless the bid is also materially unbalanced, that is, unless there is reasonable doubt that the acceptance of Textron's bid will result in the lowest overall cost to the government. DGS Contract Servs., Inc., B-245400, Dec. 30, 1991, 92-1 CPD ¶ 16. The analysis of material unbalancing focuses primarily on whether a mathematically unbalanced bid is so front-loaded that it does not become low until late in the contract term, including options. Id. Here, as noted by the agency, Textron's bid becomes low relative to all of the bids received during the first option period of the contract, and as such, there is no reasonable doubt that Textron's bid will result in the lowest overall cost to the government.<sup>4</sup> Integrated Protection Sys., Inc., B-254457.2; B-254457.3, Jan. 19, 1994, 94-1 CPD ¶ 24 (agency's acceptance of a mathematically unbalanced bid was not objectionable where

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<sup>3</sup>Textron's unit price for the base period is \$1,068,300 per lifeboat and Bollinger's is \$1,056,988 per lifeboat.

<sup>4</sup>There is nothing in the record to suggest that the agency is unlikely to exercise the options for additional lifeboats and associated equipment and services.

the bid becomes low during the first option year of a contract providing for a base and 4-option years).

Bollinger next argues that the agency improperly accepted Textron's facsimile modification to Textron's bid. The protester points out that the IFB incorporated by reference FAR § 52.214-5, which states in pertinent part that "[f]acsimile bids, modifications, or withdrawals will not be considered unless authorized by the solicitation," and that the IFB did not authorize facsimile bids, modifications, or withdrawals.

According to the record, a Textron representative hand-delivered Textron's bid to the cognizant contract specialist during the morning of April 20. Shortly before bid opening, Textron transmitted a signed bid modification to a facsimile machine located in the agency's mail room for receipt by the same Textron representative who had submitted Textron's bid. This Textron representative, after his receipt of the bid modification, sealed the modification in an envelope and hand-delivered the modification to the cognizant agency contract specialist. Textron's bid and bid modification were subsequently opened and read aloud at the bid opening.

Textron's submission of its bid modification on facsimile paper does not constitute the submission of facsimile bid modification. International Shelter Sys., Inc., 71 Comp. Gen. 142 (1992), 92-1 CPD ¶ 38; Tomahawk Constr. Co., B-243582, Aug. 7, 1991, 91-2 CPD ¶ 137. In this regard, the IFB clause in question prohibits the submission of bid modifications via facsimile machine directly to the government, and does not pertain to submission in person of a bid modification which is printed on facsimile paper, as was the case here. Tomahawk Constr. Co., supra.

The fact that Textron made arrangements for the use of an agency facsimile machine for its representative's receipt of the modification does not alter this result. As stated above, the IFB clause prohibits the submission of bid modifications by facsimile directly to the agency. Textron's bid modification was not submitted by facsimile directly to the agency, but rather, as explained previously, was transmitted to a Textron representative who then

submitted the bid modification to the agency by hand. As such, we find that the agency properly accepted and considered Textron's hand-delivered modification to its bid.

The protest is denied.

/s/            Ronald Berger  
for           Robert P. Murphy  
              General Counsel